



**Testimony**  
**Before the Committee on Veterans Affairs**  
**U.S. House of Representatives**

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*Statement of*

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## **Introduction**

Mr. Chairman and members of Committee, I am Susan McAndrew, Senior Health Information Privacy Policy Specialist, in the Office for Civil Rights. The Office for Civil Rights is the component of the U.S. Department of Health and Human Services (HHS) responsible for the implementation and enforcement of the Privacy Rule, issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). On behalf of Richard M. Campanelli, the Director of the Office for Civil Rights, I thank you for the invitation to testify today on the application of the Privacy Rule to the transfer of medical information between the Departments of Defense (DoD) and Veterans' Affairs (VA).

I am pleased to have represented the Office for Civil Rights at the July 14, 2005, roundtable discussion of these issues, hosted by Chairman Bilirakis and other members of the Subcommittee on Oversight and Investigations. My statement today will serve to enter into the hearing record the explanations and clarifications of the HIPAA Privacy Rule provided at the roundtable session. To that end, I am providing as part of my statement, the July 27, 2005, letter to Congressman Bilirakis from Mr. Campanelli which clarified selected areas of the Privacy Rule that were most relevant to the transfers of information between the DoD and VA.

## **Background**

The *Standards for Privacy of Individually Identifiable Health Information* – better known as the HIPAA Privacy Rule – establishes, for the first time, a set of national standards for the protection of certain health information. In December 2000, HHS issued the Privacy Rule to implement the requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA). Those regulations were modified in a number of significant ways by further rulemaking in August 2002 to ensure the final Privacy Rule was workable and to avoid unintended consequences of certain provisions that would have impeded an individual's access to health care or prompt payment for those health care services. These federal privacy standards have been in operation for over two years and we are pleased to note that implementation has been smoother

than many expected, with the standards now becoming embedded as part of the daily practices of most health plans and health care providers across the nation.

The Privacy Rule standards address the use and disclosure of health information that is individually identifiable – called protected health information – by persons or entities that are subject to the HIPAA requirements – called covered entities. The Privacy Rule standards also give individuals certain rights with respect to their health information, including the right to receive notice from a covered entity about that entity’s privacy responsibilities and practices and about the individual’s other rights under the HIPAA Privacy Rule, the right to access and get a copy of their medical record and to ask to have that record amended if it is incomplete or incorrect, and the right to ask for accounting from the covered entity of certain disclosures of protected health information. The HIPAA Privacy Rule creates a uniform federal floor of privacy protections for health information; however, it does not prevent states or entities from adopting laws or practices that provide additional privacy protections.

The Privacy Rule is carefully balanced to ensure strong privacy protections without impeding the flow of information necessary to provide access to quality health care, and to that end, the Rule permits covered entities to share protected health information for core purposes – to treat the individual and to obtain payment for the health care service provided – without obtaining the individual’s prior consent or authorization. In addition to treatment and payment functions that are critical to the provision of health care, the Privacy Rule also permits a limited number of other uses and disclosures of protected health information, without an individual’s authorization, based on a determination of a compelling public interest need for identifiable health information for these purposes. For example, and subject to specific conditions or limitations that may apply to each public interest purpose, a covered entity may, without individual authorization, disclose protected health information as required by other federal or state law, for public health purposes, or for research. And, of course, the individual may authorize in writing any other use or disclosure of protected health information. The Rule provides for standards for authorizations to make sure that the individual’s permission for a particular use or disclosure of his or her medical information is both informed and voluntary.

It is important to remember that the HIPAA Privacy Rule applies to persons or entities that are defined as “covered entities,” including health plans, health care clearinghouses, and any health care provider that electronically transmit health information in connection with a transaction – such as billing a health plan for reimbursement for services – for which there is a HIPAA standard transaction and code set. By statute, both the health care program for active military personnel under title 10 of the United States Code and the veterans’ health care program under chapter 17 of title 38 of the United States Code are considered to be health plans, and hence covered entities for purposes of the HIPAA Privacy Rule.

### **Key Privacy Rule Provisions**

With this general background, I would like to turn to the specific provisions of the HIPAA Privacy Rule that will have the most direct impact on the transfer of medical information between the DoD and the VA. In the first set of uses and disclosures discussed below, it will be clear that the Privacy Rule does not create a barrier to the transfer of medical information when related to provision of health care to the individual or payment for the provision of such care. The second set of uses and disclosures directly relates to the sharing of information between the DoD and the VA, and within the VA, when active duty military personnel are transferring to veteran status. Taken together, these provisions allow protected health information to be used and disclosed in a way that promotes seamless transitions from DoD to VA.

#### *Treatment and Payment*

Treatment disclosures include covered health care providers using and disclosing protected health information for their own treatment purposes and health plans or health care providers disclosing individually identifiable health information for the treatment of the individual by others. Specifically, the Privacy Rule defines treatment to include the provision, coordination, or management of health care and related services by one or more providers, including the coordination or management of health care by a health care provider with a third party, consultation among health care providers relating to a patient, and the referral of a patient from one health care provider to another. The definition allows covered entities not only to provide

health care but also to offer or coordinate social, rehabilitative, or other services that are associated with the provision of health care. Thus, the Rule would allow the sharing of patient information between DoD and VA for purposes of treating individuals, including activities related to the continuity of care and services related to that care as the individual transitions from one health care setting or program to another.

In addition, a covered entity may disclose protected health information as necessary to determine or fulfill its responsibilities as a health plan for coverage and provision of benefits, and to furnish or obtain payment or reimbursement for health care provided to an individual. Thus, the Privacy Rule would allow the sharing of patient information between DoD and VA when health care is being provided in the facilities of one Department, but the other Department is responsible for the payment or reimbursement for those services.

#### *Special Rules for Sharing Information by DoD and VA*

In addition, in drafting the Privacy Rule, we recognized the legitimate need for the DoD and VA to share an individual's medical information as that individual transfers from active duty to veteran's status, even though the individual may not at that time be receiving health care services from the VA. The Rule permits DoD to disclose, without individual authorization, the protected health information of members of the Armed Services upon their separation or discharge from military service to the VA so that the VA may determine individuals' eligibility for or entitlement to veterans' benefits. In allowing this sharing of information we considered the benefits to individuals in receiving a timely determination of their eligibility for benefits under VA programs, the general support for the information transfer program that had operated without objection prior to the Privacy Rule, and the privacy protections afforded this information when transferred to the VA under the Privacy Act, or the Privacy Rule itself. In addition, this provision also allows the sharing of protected health information within components of the VA to determine eligibility for or entitlement to veterans' benefits.

These provisions afford DoD and VA have significant to improve the timeliness and efficiency of the transfer of medical information to prevent any lapse in coverage or disruption in services to active duty service members who are transitioning to veterans status.

### *Other Provisions*

Based on our understanding of the purposes for which information will be shared between DoD and VA to provide to transition active duty military personnel to veteran status, the HIPAA Privacy Rule provisions discussed above should provide the necessary latitude to allow efficient flow of protected health information and promote a seamless transition from one healthcare system to another. In addition, other provisions of the Privacy Rule may also permit the exchange of information in particular circumstances. For example, covered entities may use and disclose protected health information without individual authorization as required by other law, including statutory and regulatory mandates. Further, as noted above, if a particular disclosure is not permitted by these or any other provision in the Privacy Rule, the components of DoD and VA that are subject to the Rule as covered entities may seek the individual service member's written authorization for the disclosure.

### **Closing**

I trust this information will be helpful to the Committee in furthering its initiatives of providing service members a seamless transition between the healthcare systems of the DoD and VA. Attached to my statement is the regulatory text for provision that specifically addresses the sharing of information between the DoD and the VA for this purpose (45 CFR 164.512(k)(1)(ii)) and excerpts from the December 2000 preamble that discusses the Department's rationale and response to public comment on this provision. Other helpful information on Privacy Rule can be found at the Office for Civil Rights HIPAA Privacy web site at <http://www.hhs.gov/ocr/hipaa>, where the full regulatory text is available, as well as summary overview of the Rule and answers to over 200 frequently asked questions.

Again, we welcome the opportunity to explain how the HIPAA Privacy Rule operates to both protect an individual's health information, without impeding or delaying the delivery of health care. Mr. Chairman, this completes my prepared remarks and I will gladly answer any questions you or other members of the Committee may have at this time.